

Libby Community Advisory Group

Meeting Summary

October 16, 2001

Introductions

Gerald Mueller and members of the Libby Community Advisory Group (CAG) introduced themselves. A list of the members in attendance is attached below as Appendix 1.

Agenda

Mr. Mueller reviewed an agenda for this meeting including the following topics:

- Attorney General Presentation
- EPA Report
- October 25 CAG Meeting
- CORA Survey
- Public Comment

Attorney General Presentation

Attorney General Mike McGrath addressed the CAG. He reiterated his written opinion which he sent to Governor Martz two months ago that there is no choice but a Superfund designation to clean up Libby residences, businesses and major sites of contamination. Because of its bankruptcy declaration, W.R. Grace will not be in a position to fund the cleanup even if the company wants to do so. In its bankruptcy filing, W.R. Grace has listed \$2.5 billion in liabilities, including \$500 million to Chase Manhattan Bank. W.R. Grace's creditors will not allow it to spend money in Libby on a cleanup, if they can prevent it. The state will file suit against W.R. Grace to protect the state's financial interests and will become a part of the bankruptcy proceedings. So far, 264 personal injury claims are pending against the state.

The Attorney General stated that two sources of unallocated cash exist that could be used to pay the state's share required 10% share of the Superfund cleanup costs without raising anyone's taxes. Also, the authority exists under two different laws for the state to sell bonds to pay its 10% share. The Resource Indemnity Trust (RIT), funded by a tax on the removal of most minerals, coal, gas and petroleum, exists to pay for reclamation and environmental improvement projects. Until the RIT amount reached \$100 million, only interest from the fund could be spent. The \$100 million cap has been reached and the fund now holds about \$1.5 to \$2 million that the legislature could allocate. The other source of cash is the Orphan Fund established by the state superfund law to pay for cleanups when no responsible party with the ability to pay exists. The fund now holds about \$3 million, and again the legislature could appropriate it towards the state 10% share of Libby federal Superfund cleanup costs. The two bonding programs are the state superfund law under which the state could borrow up to \$10 million and a hard rock mining law applicable to Libby which allows up to \$8 million in bond sales. These bonds would have to be repaid, but interest rates today are low, about 4%. A \$10 million, 20-year bond at 4% interest would require an annual payment of \$600,000. While there may be other cleanup needs that might be addressed from these funding sources, the Libby cleanup should have the highest priority because of the health impacts on this community.

Attorney General McGrath concluded by stating that the state has money and options available

to fund its 10% share of a federal Superfund cleanup and Libby should be designated a federal Superfund site to ensure cleanup.

CAG Member Question - What is Governor Martz worried about?

Answer - I'm not sure.

CAG Member Question - Is state money available for the community health center and health issues?

Answer - There are serious concerns about health issues in Libby now and ten, twenty, and thirty years into the future. RIT money cannot be used for health issues. I don't know if there are other state funds to address these concerns.

CAG Member Question - Will the state pursue medical costs in the W.R. bankruptcy proceeding?

Answer - We have not reached a conclusion about this.

CAG Member Question - Won't Governor Martz rely on the Attorney General for legal advice?

Answer - In Montana, the Governor and Attorney General are independently elected officials. Governor Martz has not sought my advice on this matter.

CAG Member Question - Will the state investigate money W.R. Grace spun off to reduce its assets in the bankruptcy proceeding?

Answer - Yes, the state is investigating. Chase Manhattan Bank and other parties are also analyzing W.R. Grace asset transfers, and the state will piggyback on these investigations. Once the deadline for personal injury filings against W.R. Grace has passed, the bankruptcy trustee will determine the amount of W.R. Grace assets. The issue of allegedly fraudulent asset transfers will be litigated before the bankruptcy court.

CAG Member Question - Will W.R. Grace be allowed to continue funding its medical care plan?

Answer - Currently funded activities such as the W.R. Grace medical care plan may be continued by the bankruptcy trustee. Legal research is being conducted seeking to avoid involving the health expenditures in the bankruptcy.

Audience Member Question - Under the Superfund cleanup, who decides what is "clean"?

Answer - This would be a topic of discussion in the Superfund process among the local community, the state Department of Environmental Quality, and the EPA Administrator. What standards are acceptable will depend on the particular facts in a particular case.

CAG Member Comment - A series of W.R. Grace documents beginning in the 1960's demonstrate that W.R. Grace knowingly withheld information from its workers and regulators. (Copies of the documents were given to the Attorney General.) Consideration should be given to filing criminal endangerment, criminal negligence, and/or homicide charges against W.R. Grace.

Response - It is difficult to proceed simultaneously down both criminal and civil tracks. Criminal proceedings can impede both the bankruptcy and personal injury recovery. We need to be cautious and to try to work with EPA and potential civil litigants prior to filing criminal charges.

CAG Member Question - Will the statute of limitations expire if civil action is pursued?

Answer - If the statute of limitations has not already been triggered, then it will not do so in the coming months or years. The criminal endangerment statute was not passed until 1987, so it will not apply here.

Audience Member Question - Can you convince Governor Martz to change her mind about using the silver bullet (i.e. the state's right to designate one site on the Superfund National Priorities List)?

Answer - Unless she asks, it is not my place to advise her. It is, however, appropriate for you individually, the CAG, the County, and the City to urge her to do so.

CAG Member Question - Can EPA override the Governor's decision not to use the silver bullet?

Answer - No.

CAG Member Comment - The Council on Aging sent eleven letters on a particular issue, and was effective. Letters have considerable impact. Our research indicates that one letter represents the views of 77 people.

Audience Member Comment - I am a University of Montana Communications major, and I am working to organize a community response to change the Governor's mind about the Superfund designation and use of the silver bullet.

CAG Member Question -Do you as the Attorney General have any insight into the Governor's logic?

Answer - No.

Audience Member Question - Can the EPA override negative action by the Governor on the Superfund listing?

Answer - The Governor has three options regarding a NPL decision: oppose the designation, support it, or take no action. Governor Racicot took no action regarding the listing of a project in the Ten Mile Creek drainage outside of Helena, and EPA proceeded with the listing.

CAG Member Question -So if the Governor does not act, EPA can add Libby to the NPL?

Answer - Yes.

CAG Member Question - Can the bankruptcy court address the \$2.5 billion of its assets that W.R. Grace moved overseas?

Answer - Yes. These assets are part of the controversy, and the bankruptcy court could rule that they were illegally transferred.

Audience Member Question & Comment - Why have no criminal charges been filed against W.R. Grace? I request a criminal investigation.

Answer - We have not ruled out criminal charges. We need to see how the civil processes proceed.

CAG Member Comment - It must be our goal to see that what happened in Libby never happens again. If we need new criminal laws, then they should be passed.

CAG Member Comment - It appears that one way to get away with murder is to ensure that you have enough civil liabilities so that criminal charges won't be filed.

Response - The situation is extraordinarily complicated. If criminal charges are filed, we lose

the right of discovery and the criminal process will take precedence over both the rights of individuals to receive compensation and funding for the environmental cleanup.

CAG Member Comment - We appreciate the time you have spent here and the sincerity and concern that you have expressed. We are also frustrated and disturbed that as the state's chief legal officer you have not been consulted by Governor Martz. Please take back forcefully to the Governor that Libby is united and wants both the Superfund designation and her use of the silver bullet.

EPA Report

Chris Weis reported on behalf of EPA.

The cleanup of the schools has been completed. The contaminated material has been removed from high school and middle school tracks and both have been regraded. The track surfaces will be re-installed next spring. The school tennis courts will also be replaced next spring. Two tennis courts remain available for play on City property.

Cleanup of the screening plant site is proceeding. Sub-grade material has been replaced and will be covered with agricultural grade fill so that the Parkers can move back and resume their business. Contaminated material and soils continues to be moved from the KDC Flyway to the mine for disposal. The rip rap has been installed along about one half of the effected river bank.

The local EPA team is sampling four to five residences per day. There are about 200 residences on a list to be sampled. People wanting such samples should contact Linda Newstrom at the EPA Information Office. The largest residential cleanup, the Siefke property, is nearing completion. The contaminated material has been removed. Cleanup of the house and furniture should be finished within two weeks so the Siefkes can move back into their home.

EPA has conducted pilots to determine the cost and time requirements for of residential cleanups of yards, gardens, and removal and replacement of attic and wall insulation.

The EPA team has also been working on the NPL process to collect the information necessary for the required environmental and public health scoring so that Libby can be ranked in the Superfund listing process. We are hoping for the Governor's immediate approval of the listing. Use of the silver bullet would help us hit the ground running. If the Governor opts not to use the silver bullet, the listing process will require significant time to complete.

CAG Member Question - Has EPA sampled under the far field at the Little League ball fields?
Answer - We will check and report back.

Audience Member Question - If and when the Governor says no to the listing, is EPA preparing to override her decision?

Answer - It is EPA policy to make every attempt to gain the Governor's support. We will continue to work with her.

CAG Member Question - After the cleanup of the Rain Tree property is completed, will EPA run ads announcing this fact?

Answer - This is a good idea. We want to see the Parkers flourish and will issue a clean bill of health once cleanup is finished.

CAG Member Question - When will EPA turn back this property to the Parkers?

Answer - I'm not sure, but by next spring at the latest.

CAG Member Question - What is the status of the Millwork West planer building?

Answer - The decision has been made to move the equipment and take the building down. The equipment, however, is old and heavy and must operate precisely. The move is being negotiated.

Audience Member Question - I am concerned that the mine and city area be listed as separate sites so the city can be cleaned up first.

Answer - Two separate sites are not necessary to ensure that the city area can be cleaned up before mine. A single site can have several operable units that can be addressed one at a time.

Audience Member Comment - EPA should educate the Governor about the benefits of the silver bullet.

Response - The Governor has not asked site team about the silver bullet option. We are available for consultation.

CAG Member Question - What are the ramifications for removing operable units from the NPL? For example, could the residential areas be removed before the mine?

Answer - Yes. Each operable unit could be removed from the list as its cleanup is completed. Designating only one site with several operable units has administrative advantages over multiple sites.

CAG Member Comment - So long as each operable unit can be cleaned up and removed separately from the list, it is ridiculous to have two sites.

Response - The silver bullet can be used only on one site, but the site can have multiple operable units.

October 25 CAG Meeting

At its September 27 meeting, the CAG decided to invite representatives of other communities that have experience with the Superfund process to appear on October 25 at both an open house during the day and at a CAG meeting in the evening. These representatives would be asked to share their experience and answer questions. The day and nighttime meetings would maximize the opportunity for people from the community to attend. Wendy Thomi was asked to compile a list of sites from which the CAG might invite representatives and she and Gayla Benefield would arrange for the open house and CAG meeting. Gayla Benefield reported that Ms. Thomi has identified four possible sites, three in Montana, East Helena, Butte-Anaconda, and the Clark Fork River & Milltown Reservoir, and one site in Idaho, Bunker Hill. Ms. Benefield stated that she has contacted people from each of the sites and they are willing to come to Libby, but for various reasons, the October 25 date will not work for them.

After discussion, the CAG agreed to schedule the visit by representatives of the Superfund communities on November 15. An open house will be held during the day followed by the

CAG meeting in the evening. The CAG will also meet on November 8 to hear from federal housing officials on the implications of a Superfund listing to home mortgages and appraisals and will host an open house earlier that same day on the same topic.

CAG Member Comment - The open house and CAG meeting are to provide information to the Committee about the Superfund listing. The County Commission and the City Council have gone on record supporting designating Libby as a Superfund site and asking that Governor Martz use her silver bullet to make the designation. The CAG should also go on record supporting the listing and use of the silver bullet.

CAG Action - After an opportunity for public comment, the CAG unanimously passed a seconded motion supporting both the Superfund designation and use by the Governor of the silver bullet to place Libby on the NPL. Sandy Wagner agreed to draft a letter to Governor Martz to this effect. A signature sheet was passed so CAG members could sign the letter. A copy of the letter sent to Governor Martz is found below in Appendix 2.

County Report

Commissioner Rita Windom addressed the CAG. She reported that the County Commissioners met recently in Helena with Governor Martz. The Commissioners told the Governor that while she may hear from a minority opposing NPL for Libby, the majority of people in Libby supports it. The Commissioners asked for both the NPL designation and use of the silver bullet. Governor Martz said that she would not exercise her authority to place Libby on the NPL, preferring to save this designation for the event of a larger catastrophe. The Governor did commit that the County Commissioners would be part of the listing discussion with EPA. Commissioner Windom asked that the community give the Commissioners the tools to advocate for listing and use of the silver bullet in the discussions. Specifically, people should talk with their friends and encourage them to write letters to the Governor asking for the Superfund designation and use of the silver bullet.

CAG Member Question - Do you want copies of letters of support that you can take then to the discussions with the Governor and EPA?

Answer - Yes.

CORA Survey

Laura Sedler reported on the CARD Outreach for Recovery Assistance or CORA project. CORA will provide assistance to people facing mental health issues such as financial concerns, depression and substance abuse as a result of the asbestos exposure and disease. She introduced Helen Clark who is the community coordinator for CORA and Bonnie Selzler who is the project's consultant on community mental health responses to disasters. Ms. Selzler said that people responding to disasters often need support, and that this need is not a sign of mental illness. She said that her interviews in the community have identified a need for additional individual and family therapy. She said that Libby people have strengths but may need support to get handle the stress and grieving associated with these tough times.

Ms. Sedler passed out a survey, which is included in Appendix 3, which she urged everyone to fill out and mail back to Helen Clark at St. John's Hospital, 350 Louisiana Ave., Libby MT 59923. The purpose of the survey is identify the issues and impacts people have encountered

related to tremolite asbestos exposure.

Public Comment

CAG Member Comment - The silver bullet, i.e. the Governor's designation of Libby as a Superfund NPL site, is still the best option.

Next Meeting

The next two meetings are scheduled for Thursday, November 8, 2001 from and Thursday, November 15, 2001 7:00 to 9:00 p.m. in the Ponderosa Room of Libby City Hall.

Appendix 1 CAG Member & Guest Attendance List October 16, 2001

Members	Group/Organization Represented
Don Wilkins	Lumber & Sawmill Workers
Sandy Wagner	Lincoln County Community Health Center
George Keck	Community Health Center
Dr. Brad Black	Lincoln County Health Officer/CARD
Clinton Maynard	Area Asbestos Research Group
Mike Switzer	Asbestos Victim
Cyrus Lee	Kootenai Valley Head Start
Bob Dedrick	Asbestos Victim
George Bauer	City of Libby
Chris Weis	US EPA
Paul Peronard	EPA On-Scene Coordinator
Rick Palagi	St. John's Lutheran Hospital
Leroy Thom	Former Grace Employee
Gayla Benefield	LCAVRO
Les Skramstad	Asbestos Victim (Alternate for Norita Skramstad)
Robert H. Foote	Libby Ministerial Association
Rep. Eileen Carney	State Representative

Appendix 2

COMMUNITY ADVISORY GROUP

501 Mineral Avenue
Libby, MT 59923

Phone 406-293-6194
Fax 406-293-5668

October 17, 2001

Governor Judy Martz
Montana State Capitol
P.O. Box 200801
Helena, Montana 59620-0801

Re: Superfund Designation for Libby

Dear Governor Martz:

Over the course of the past several weeks, you have had the opportunity to visit Libby and to learn first hand that this community has the immense task of finding an immediate and comprehensive solution to the nation's number one environmental disaster. To accomplish this daunting task will take the full cooperation of all parties concerned, the Libby area residents, our City Council, our County Commissioners, our State officials, and several departments of our federal government.

For the past two years the Community Advisory Group has worked endlessly to be an intricate part of the solution. With the assistance of many agencies, this group has been able to assist in finding several very viable solutions to this health and environmental tragedy. To this end, the Community Advisory Group, a diverse representation of the Libby community, are in concert with the opinion recently shared with your office by the City of Libby and the Lincoln County Commissioners. Libby must be named a superfund site and placed on the NPL. To accomplish this listing in the most timely manner available, we too, respectfully request that you use the "silver bullet" option.

To date, the concerns that you expressed in Libby have been satisfactorily answered. Several different revenue sources, including the Resource Indemnity Trust Tax Fund, the Orphan's Share Account, the use of "in-kind services", the sale of bonds, the commitment from EPA Administrator Whitman, the commitment of Senator Baucus and Representative Rehberg, the Governor's Environmental Contingency Fund and the potential of the \$116 million dollar State budget surplus by the middle of 2003 are but a few of the revenue Sources available to defray the State's expense.

Public and private landowners whether it be of a business or residential nature have been assured that they will be held harmless in respects to any and all costs associated with the clean-up) and that adequate protection will be afforded them from the possibility that they be named in a third party liability claim situation initiated by W.R. Grace. This brings great piece of mind to this community.

The EPA has committed to a very workable "timeframe" for the completion of the clean-up project

and the Community Advisory Group is just one source whose responsibility will be to see that the timeframe is met and that the work is completed to the standards outlined in the remediation plan. To date the on-site staff have been most timely and accountable for their actions. The economic revitalization of this community depends heavily on all parties working hand in hand to complete the clean-up process expeditiously and without frivolous, litigious intervention.

Most recently you advised our community leaders that you must save the "silver bullet" option for a September 11th type tragedy. The lead agency for these types of events is FEMA not the EPA. Nevertheless, if you put the population of the Libby community in perspective to the population of New York or Washington D.C., you have a September 11th event that you must address today. Some 14% of our residents have died or will die a most painful death as the result of the unspeakable, reckless acts of a corporate giant. Like the terrorists, W.R. Grace must be held accountable for their actions.

It is most urgent that you and your staff return to Libby in mid-November to present the State's plan for becoming an active partner in the solution. This plan must comprehensively outline the State's contribution to the remediation plan and the State's commitment to assisting with the long term health care needs of hundreds of our citizens over the next 40-50 years.

It goes without saying that you as the leader of the State of Montana must step up to the podium, acknowledge the tragedy, and become a "ground zero" participant in implementing the most effective, timely solution possible in this ongoing war against asbestos contamination.

We look forward to your next visit to Libby.

Sincerely yours,

(Signatures Attached)

Community Advisory Group

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Appendix 3

Asbestos Related Impacts
Preliminary Survey

Please answer the following short set of questions to indicate what types of issues and impacts related to tremolite asbestos exposure you believe you have encountered among your clients or co-workers. Please include such secondary concerns as a community member's worries about business impacts etc. Use the scale to indicate the frequency of occurrence. If you have multiple employees, please copy this survey and distribute it to them.

Issue	Often	Sometimes	Never
Concerns about own health	()	()	()
Concerns about loved one's health	()	()	()
Financial Concerns (general)	()	()	()
Financial Concerns (healthcare)	()	()	()
Increased Depression	()	()	()
Sadness/Grief	()	()	()
Anxiety/Worry	()	()	()
Concerned children	()	()	()
Concerns about children	()	()	()
Increased Violence at home	()	()	()
Increased drug or alcohol use	()	()	()
Anger/Rage	()	()	()
Guilt	()	()	()
Hopelessness/wanting to die	()	()	()
Harm to self or others	()	()	()
Other: _____	()	()	()

**St. John's Lutheran Hospital
Attn: Helen Clark, Community Outreach
350 Louisiana Ave.
Libby MT 59923.**